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2. PLEADING—*General issue—Special pleas.* Where the general issue has been pleaded, special pleas which set up matters of defence which can be proved under the general issue should be rejected.

3. BONDS—*Non est factum—Failure of obligor to sign—Injury.* The failure of one of the obligors in a bond to sign it in person, if it can be set up as a defence in any case by the other obligors, cannot be set up where it appears that judgment has been rendered against such obligor, and no one has been injured by his failure to sign and acknowledge the bond in proper person.

PAYNE'S EX'ORS V. HUFFMAN.—Decided at Wytheville, June 21, 1900. *Cardwell, J.* Absent, *Riely, J.*:

1. ASSIGNOR AND ASSIGNEE—*Diligence—Recourse—Case in judgment.* Due diligence must be used to charge either a guarantor or an assignor. The assignee being entitled to recover of the assignor on the grounds of failure of consideration, it will devolve on him to show (unless otherwise agreed) that he used due diligence to collect the debt of the debtor, but used it in vain. What is due diligence cannot be precisely defined, but immediate suit, followed by execution, is always due diligence, though this is not indispensable. In the case in judgment the assignee has not only failed to show due diligence or lack of injury to the assignor, but the evidence tends to show that if diligence had been used the debt could have been made out of the principal debtor, and therefore the assignee cannot recover of his assignor.

REPASS V. MOORE.—Decided at Wytheville, June 21, 1900.—*Keith, P.* Absent, *Riely, J.*:

1. SUBROGATION—*Taxes—Voluntary payment by treasurer.* A county treasurer who voluntarily pays the State and county taxes of a tax-payer in his hands for collection without any previous request or subsequent promise of indemnity, and with no assignment of the tax lien (if it be capable of assignment) is not entitled to be subrogated to the liens of the State and county for the taxes so paid. The doctrine of subrogation is not enforced in favor of mere volunteers.

WISE V. COMMONWEALTH.—Decided at Wytheville, June 21, 1900.—*Keith, P.* Absent, *Riely, J.*:

1. CRIMINAL LAW—*Trespass—Claim of right—Bona fides—Evidence—Verbal contract to convey land.* A defendant cannot be convicted of a trespass where the act complained of was done under a *bona fide* claim of right, and evidence of a verbal contract to convey to the defendant the land on which the alleged trespass was committed, though not admissible to show title, is admissible to show the *bona fides* of defendant's claim.

WARD V. REASOR.—Decided at Wytheville, June 28, 1900. *Cardwell, J.* Absent, *Riely, J.*:

1. PLEADING—*Malicious prosecution—Declaration—Finality of prosecution.* In an action for malicious prosecution it must be charged and proved, amongst other things, that the prosecution alleged in the declaration and conducted to its termi-